Supreme Court, U.S.
FILED

No. _____ 05134 7 APR 2 0 2005

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In The

Supreme Court of the United States

TERRY C. COLEMAN,

Petitioner,

v.

NEW ORLEANS and BATON ROUGE STEAMSHIP PILOTS' ASSOCIATION, CRESCENT RIVER PORT PILOTS ASSOCIATION, INC., and BOARD OF RIVER PORT PILOT COMMISSIONERS,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

WILLIAM M. MCGOEY,
LSBA #14205
BARBARA RYNIKER EVANS & ASSOC.
650 Poydras Street, Suite 2045
New Orleans, LA 70130
(504) 523-8523
Attorney for Petitioner,
Terry C. Coleman

COCKLE LAW BRIEF PRINTING CO (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED

Plaintiff, Terry C. Coleman, filed complaints alleging that he was denied entry into two river pilot apprenticeship programs because of his age (over forty). The trial court dismissed his claims on summary judgment, finding that the Age Discrimination in Employment Act is inapplicable because respondents, New Orleans and Baton Rouge Steamship Pilots' Association (hereinafter "NOBRA"), Crescent River Port Pilots Association, Inc. (hereinafter "Crescent") are not employers and the Board of River Port Pilots Commissioners (hereinafter "the Board of Commissioners") is not a joint employer. The United States Fifth Circuit Court of Appeals upheld the dismissal. The question presented here is:

I. Should the Fifth Circuit's affirmation of the lower court's findings that the NOBRA and Crescent are not employers and that the Board of Commissioners is not a joint employer under the Age Discrimination in Employment Act be allowed to stand?

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
TABLE OF AUTHORITIES	iv
OPINIONS BELOW	1
JURISDICTION	1
STATUTES INVOLVED IN THIS CASE	2
STATEMENT OF THE CASE	3
REASONS FOR GRANTING THE WRIT	8
I. THE FIFTH CIRCUIT ERRED IN GRANTING SUMMARY JUDGMENT AND DENYING COLEMAN'S MOTION FOR RECONSIDERATION BY FINDING THAT THE ADEA DOES NOT APPLY TO CRESCENT BECAUSE IT IS NOT AN "EMPLOYER"	8
II. THE FIFTH CIRCUIT ERRED IN GRANTING SUMMARY JUDGMENT AND DENYING COLEMAN'S MOTION FOR RECONSIDERATION BY FINDING THAT THE ADEA DOES NOT APPLY TO THE BOARD OF COMMISSIONERS BECAUSE IT IS NOT A "JOINT EMPLOYER"	16
III. THE FIFTH CIRCUIT ERRED IN GRANTING SUMMARY JUDGMENT AND DENYING COLEMAN'S MOTION FOR RECONSIDERATION BY FINDING THAT THE ADEA DOES NOT APPLY TO NOBRA BECAUSE IT IS NOT AN "EMPLOYER"	16
CONCLUSION	17

TABLE OF CONTENTS – Continued

Page

APPENDIX

U.S. Fifth Circuit Court of Appeals Opinion .....App. 1

Coleman v. New Orleans Baton Rouge Steamship Pilots Association Order and Reasons (Motion for Reconsideration).....App. 22

Coleman v. New Orleans Baton Rouge Steamship Pilots Association Order and Reasons (Motion for Summary Judgment).....App. 26

Coleman v. Crescent River Port Pilots Association, Inc. Order and Reasons (Motion for Reconsideration).....App. 35

Coleman v. Crescent River Port Pilots Association, Inc. Order and Reasons (Motion for Summary Judgment).....App. 39

TABLE OF AUTHORITIES

Page

CASES

Coleman v. New Orleans and Baton Rouge Steamship Pilots Association, 437 F.3d 471 (5th Cir. 2006) 1

Clackamas Gastroenterology Associates, P.C. v. Wells, 538 U.S. 440 (2003) 11

Community for Creative Non-Violence v. Reid, 490 U.S. 730 (1989) 12

EEOC v. Joint Apprenticeship Committee, 80 FEP Cases 1519 (2nd Cir. 1999) 9, 10, 11

Ehret v. State of Louisiana, 862 F. Supp. 1546 (E.D. La. 1992) 15

Guy v. McDonald, 27 S.Ct. 62 (1906) 15

Kotch v. Board of River Port Pilot Com'rs for Port of New Orleans, 330 U.S. 552 (1947) 5

McKeithen v. The SS FROSFA, 441 F. Supp. 1213, (E.D. La. 1977) 15

Nationwide Mutual Insurance Company v. Darden, 503 U.S. 316 (1992) 11, 12, 14

STATUTES AND REGULATIONS

28 U.S.C. §623 ..... 1, 2, 8, 9

28 U.S.C. §630 3

28 U.S.C. §1254(1) 1

29 C.F.R. §1625.21 ..... 3, 9

PETITION FOR WRIT OF CERTIORARI

Terry C. Coleman, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Fifth Circuit entered in this matter on January 24, 2006, 2000. It is reprinted in the Appendix on page 1 (hereinafter referred to as "App. 1").

OPINIONS BELOW

The opinion of the United States Fifth Circuit Court of Appeals that gives rise to this petition is entitled *Coleman v. New Orleans and Baton Rouge Steamship Pilots Association*, 437 F.3d 471 (5th Cir. 2006). The Fifth Circuit's opinion is reprinted in the Appendix at App. 1. The trial court's opinions granting summary judgment dismissal and denial of Coleman's motions for reconsideration are reprinted in the Appendix at App. 22-41.

JURISDICTION

On January 24, 2006, the Fifth Circuit affirmed the United States District Court for the Eastern District of Louisiana's dismissal of Coleman's claims under the Age Discrimination in Employment Act (hereinafter "the ADEA"), 29 U.S.C. § 623 *et seq.*, App. 1. This petition has been filed within ninety days of the decision, Supreme Court Rule 13.1. The jurisdiction of this court is invoked pursuant to 28 U.S.C. § 1254(1).

STATUTES INVOLVED IN THIS CASE

U.S.C. § 623 provides in pertinent part:

(a) Employer practices

It shall be unlawful for an employer –

> (1) to fail or refuse to hire or to discharge an individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age; (2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's age;

(b) Employment Agency practices –

It shall be unlawful for an employment agency to fail or refuse to refer for employment, or otherwise discriminate against, any individual because of such individual's age, or to classify or refer for employment any individual on the basis of such individual's age.

(c) Labor organization practices

It shall be unlawful for a labor organization –

> (1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his age; (2) to limit, segregate, or classify its membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would

> limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's age; (3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

29 U.S.C. § 630 provides in pertinent part:

> (b) The term "employer" means a person engaged in an industry affecting commerce who has twenty or more employees . . .
>
> (1) any agent of such person, and (2) a State or political subdivision and any agency or instrumentality of a State or political subdivision of a state . . .
>
> * * *
>
> (f) The term "employee" means an individual employed by an employer . . .

29 C.F.R. § 1625.21 provides in pertinent part:

> All apprenticeship programs, including those apprenticeship programs created or maintained by joint labor-management organizations, are subject to the prohibitions of Section 4 of the Age Discrimination Employment Act of 1967, as amended, 29 U.S.C. § 623(a).

STATEMENT OF THE CASE

Petitioner, Terry Coleman (hereinafter "Coleman"), is an African-American, who was born on October 6, 1951. He graduated from Clark University in 1974 with a Business Administration degree and subsequently earned 38

hours towards an M.B.A. He worked in several industries. In 1990, he began working in the maritime industry and has been captaining boats on the Mississippi since 1994. Coleman was forty-seven years old in 1999 when respondent, Crescent River Port Pilots Association, Inc. (hereinafter "Crescent") denied him entrance into its apprenticeship program. He was forty-nine years old when respondent, New Orleans and Baton Rouge Steamship Pilots Association (hereinafter "NOBRA"), denied him entrance into their apprenticeship program. Entrance into one of the programs leads to employment as a Crescent or NOBRA river pilot at an annual salary of more than three hundred thousand dollars. Until recently, there were no African-American river pilots employed by any of the pilot associations in Louisiana. Thus, when Coleman was a young adult there was no opportunity for him to become a river pilot.

Louisiana's legislature has created several river pilot associations, with each one having a monopoly on a certain segment of the Mississippi River. Any foreign ship traveling on the Mississippi River through Louisiana must hire a pilot from one of these associations to navigate the vessel through that association's stretch of the Mississippi River. Thus, a foreign ship traveling through Crescent's portion of the River must hire a Crescent pilot to navigate and once the ship is traveling through NOBRA's portion of the river, the ship must hire a NOBRA pilot to navigate.

In order to become a Crescent pilot, an applicant applies to the Board of River Port Pilots Commissioners (hereinafter the "Board of Commissioners"), which consists of three Crescent members, selected by the Crescent membership. The Board of Commissioners sends to Crescent a list of all applicants who meet Crescent's qualifications. One

qualification is a candidate must be younger than forty years old. The Crescent membership then votes on the qualified applicants and selects who is "elected" into the apprenticeship program. The winners are then entered into the one year apprentice program operated by the Board of Commissioners and Crescent.

Once a candidate completes the apprenticeship program, the Board presents the pilot to the Louisiana governor who signs his commission. The pilot buys Crescent stock and becomes a "member." Crescent then schedules the pilot to pilot ships through Crescent's arrangements with the shipping companies. The pilot is paid by Crescent based on how many shifts he has taken per month. If the pilot breaches either Crescent or the Board of Commissioner's rules, he is subject to discipline from both. If a pilot commits a serious infraction, the Board can institute hearings and recommend decommissioning by the governor, who usually concurs.

The process for becoming a NOBRA pilot is identical except that the NOBRA commissioners are called the Board of Examiners and the NOBRA rules require that candidates be under forty-five years old.

When Coleman was a young man, there were no African-American pilots in any of the associations. Dating back to 1805, Louisiana pilot associations routinely only "elected" family members and friends into the apprenticeship programs. See *Kotch v. Board of River Port Pilot Com'rs for Port of New Orleans,* 330 U.S. 552, 560 (1947). Once Coleman learned that there was only one African-American pilot, Kelvin Boston, among the monopoly pilot organizations in the State of Louisiana, his interest in

becoming a pilot intensified. By the time Coleman started attempting to ride with pilots, he was already over forty but under forty-five years of age.

Kelvin Boston, a NOBRA pilot, allowed Coleman to ride with him on the NOBRA segment of the Mississippi River so that Coleman could take the test to obtain the first class Coast Guard license he needed to qualify as a candidate for the NOBRA apprenticeship program. NOBRA's president, Joe Clayton, told Coleman that he would be an asset to NOBRA, except for his age. Coleman completed the necessary rides and passed the test to obtain the First Class License for the NOBRA stretch of the river in February of 1996, however NOBRA had just completed an election class in late 1995. Coleman applied for the second apprentice class of the 1995 election but Clayton informed him that he was too late.

Coleman also sought to become a pilot with Crescent as he learned that NOBRA and Crescent had entered into an agreement with the Black Caucus of the Louisiana legislature that they would recruit minority pilots. Crescent's President, Captain Mark Delesdernier, told Coleman that if he filed an injunction to stop the NOBRA election, that "we could file a suit against you for millions of dollars." Undeterred, Coleman began attempting to obtain rides on the Crescent stretch of the River so that he could obtain the Coast Guard license required to be placed on the ballot for election into the Crescent apprenticeship program. However, no Crescent pilots would allow him to ride with them because of his age. Coleman even attempted to ask Crescent pilots for rides after one of the Crescent meetings and Coleman was warned that he should leave because the pilots wanted to "break his legs." Upon learning in 1999 that Crescent would be having an

election, Coleman submitted an application. Coleman's name was not submitted on the ballot due to his age.

Coleman learned that NOBRA was going to have an election in 2001. Clayton told Coleman that he still had the age problem. Coleman asked if NOBRA had any new requirements and Clayton informed him that he needed a bridge resource management course. Coleman asked where he could take the course and Clayton said that it was offered in Florida; however, Coleman discovered that it was offered in nearby Morgan City, Louisiana. Coleman passed the course prior to the election; however, Coleman was not placed on the apprenticeship ballot.

Coleman was treated quite differently than the younger candidates. NOBRA and the Board of Examiners, which consists of NOBRA members, routinely pre-select the applicants to be elected into the apprentice program. In both 1995 and 2001, a list was circulated telling pilots which candidates should be elected. In 2001, several of the young, pre-selected applicants did not even have applications on file with the Board and were given preferential treatment. For example, NOBRA member Louis Wattigny was informed that the election would be delayed so that young, L.M. Wattigny, III, could obtain the requisite Coast Guard license. NOBRA Vice-President, Marvin Bowman, created a list of deficiencies of the young pre-selected applicants, and gave it to the President of the Board, Martin Gould, to correct the deficiencies. He even arranged special ship simulator and bridge resource management courses for the young applicants. Of course, all of the winners of the election were under forty-five years of age.